

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH FELIX,

Defendant.

Case No. 2:13-cr-0042-APG-PAL

**ORDER GRANTING MOTION TO
WITHDRAW GUILTY PLEA**

(Dkt. No. 61)

On October 10, 2013, defendant Joseph Felix executed a written Plea Agreement with the United States. (Dkt. #48.) On October 16, 2013, Mr. Felix appeared before me and entered a plea of guilty to Count One of a Superseding Information. (Dkt. #49.) I accepted his plea. His sentencing date was postponed four times based on stipulations between the parties. On June 18, 2014, Mr. Felix filed a motion to withdraw his guilty plea. (Dkt. #61.) At the July 2, 2014 hearing on that motion, I canvassed Mr. Felix (outside the presence of the Government) about his request to withdraw his plea. (Dkt. #66.) I discussed with him the potential consequences of his request. Based upon Mr. Felix's responses to my questions, and the information he provided at that hearing, I find that a "fair and just" reason exists to allow Mr. Felix to withdraw his plea. Fed.R.Crim.P. 11(d)(2)(B).

Mr. Felix's request to withdraw his plea is not based on inadequate, erroneous, or inappropriate legal advice. Rather, it is based on allegedly newly-discovered evidence that he was not privy to before entering his plea. "In this Circuit, '[f]air and just reasons for withdrawal include inadequate Rule 11 plea colloquies, newly discovered evidence, intervening circumstances, or any other reason for withdrawing the plea that did not exist when the defendant entered his plea.'" *United States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir. 2008) (quoting *United States v. Davis*, 428 F.3d 802, 805 (9th Cir. 2005) (emphasis omitted).

Accordingly, Mr. Felix's motion to withdraw his guilty plea is granted, and his plea of guilty is stricken. The Sentencing Hearing scheduled for August 20, 2014 is hereby vacated.

1 Under 18 U.S.C. § 3161(i), with regard to calculation of the deadlines under the Speedy
2 Trial Act, Mr. Felix “shall be deemed indicted with respect to all charges . . . within the meaning
3 of [18 U.S.C. §] 3161” on the date this order becomes final. If either party disagrees with this
4 determination regarding the Speedy Trial Act, he or it shall file a motion for reconsideration
5 within seven days of entry of this order so the trial date can be set appropriately.

6 Dated: July 10, 2014.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE